the Relief Act of July 13, 1926 (Forty-fourth Statutes at Large, page 915): *Provided further*, That only such lands as are within or contiguous to the former limits of said grants may be accepted in an exchange hereunder for such former grant lands and that all lands and timber secured by virtue of any such exchange shall be disposed of in accordance with the terms and provisions of said Revestment Act of June 9, 1916: *And provided further*, That no sales of lands classified under said Act of June 9, 1916, as of class 3, or agricultural lands, shall be made for less than $2.50 per acre, and of lands of class 2, or timberlands, for less than the appraised value of the timber thereon.

SEC. 2. That all moneys received from or on account of any lands leased or sold hereunder shall be applied in the manner prescribed by the aforesaid Acts of June 9, 1916, and February 26, 1919.

Approved, April 13, 1928.

## BIG PINE MINING CORPORATION

*Decided July 20, 1931*

MINING CLAIM—LODE CLAIM—PLACER CLAIM—DISCOVERY.

A lode discovery will not sustain a placer mining location.

MINERAL LANDS—MINING CLAIM—LIMESTONE.

Lands containing limestone or other minerals, which under the conditions shown in the particular case can not probably be successfully mined and marketed, are not valuable because of their mineral content, nor subject to location under the mining law.

DIXON, *First Assistant Secretary:*

The Big Pine Mining Corporation has appealed from a decision of the Commissioner of the General Land Office of May 18, 1931, which affirmed the local register in holding its mineral entry, Los Angeles 045160, for cancellation. The application for patent made March 6, 1928, embraced the following named and described placer locations alleged to be valuable on account of limestone deposits, viz, Little Johnnie, covering lots 3, 4, 5, and the SE¼ NW¼ Sec. 6, T. 3 N., R. 7 W.; Big Pine, covering lots 1 and 2, Sec. 1, T. 3 N., and S½ SE¼ Sec. 36, T. 4 N., R. 7 W.; Eagle, covering lots 2 and 4 Sec. 1, T. 3 N., and S½ SW¼ Sec. 36, T. 4 N., R. 8 W., S. B. M.; all within the Angeles National Forest.

Upon consideration of the testimony adduced at a hearing held November 19, 1929, in protest proceedings brought by the Forest Service, the Commissioner concurred in the findings of the local register, that the limestone on the claims had no commercial value; that $500 had not been expended in labor and improvements upon or for the benefit of each or any of the claims; that the land is chiefly valuable for recreational purposes. Claimant on appeal contends these conclusions are not warranted.

It appears without dispute in the testimony that these claims in controversy are laid over mountain ridges with steep sides that rise about 2,500 feet above the desert plain and are adjacent to the Los Angeles Park and a subdivision known as Wrightwood; that a belt of limestone of varying width, amounting to several hundred feet in places, traverses the entire length of the Eagle and Big Pine locations and extends for a considerable distance into the Little Johnnie claim. According to the analyses presented by claimant's witnesses, the calcium carbonate content of the limestone deposit varies from 25.8 per cent on the Little Johnnie to 96.6 per cent on the Big Pine claim. The analysis offered by the Government showed considerable less percentage in calcium corbonate. The testimony on both sides agrees that the lime deposit is in lode formation within well-defined granite walls, and that the method of transporation of the deposit from the claims would be by aerial tramway, estimated to cost, by a Government's witness, at $40,000 per mile; by claimant's witness, $20,000 per mile.

The opinions of the Government's witnesses differed with those of claimant's witnesses as to whether the deposit in its situation could be mined, transported and marketed at a profit, and as to whether a reasonably prudent person would expend any money in such a venture.

Witness Lamb for the Government testified that he had been engaged in quarrying limestone in the locality for a number of years and sold thousands of tons of lime rock, and was acquainted with the deposit in question; that the value of a limestone deposit in the locality depended upon its accessibility and that the mining thereof was not economically feasible, because the cost of production and transportation of the deposits would exceed the sale value of the lime obtained therefrom. Roberts, a mining engineer, testified that he at one time had this deposit investigated to see if it could be leased or purchased but stopped all negotiations for the reason that he thought the transportation costs too high. He also testified to the effect that he made a calculation as to the feasibility of developing a similar deposit on NE¼ Sec. 2, T. 3 N., R. 7 W. (adjacent land), either in 1923, 1924, or 1925, and found there would be required 11½ miles of aerial tramway and that the cost was prohibitive. Testimony offered by the Government, which is not denied, is to the effect that limestone deposits are widely distributed in the region of these claims, and much of it more accessible. These witnesses and the mineral examiner for the Forest Service also testified that the land was more valuable for recreational than any other purpose. Witness Lamb testified that he was an official land appraiser, and valued the land in Los Angeles Park at $3,000 per acre, and if a road were

extended therefrom to the land in question, the latter would be worth from $300 to $600 per acre for such purposes. For the claimant, Sampson, a mining engineer, and Baverstock, mineralogist and metallurgist, expressed the opinion to the effect that the quality and quantity of limestone on the claims was such as to justify investment for its development, but both are shown to have had no experience in developing, mining or selling limestone deposits, and advance no particular reason as a basis for their opinion. Lands containing limestone or other mineral, which under the conditions shown can not probably be successfully mined and marketed, are not valuable because of their mineral content, nor subject to location under the mining law. *Morrill* v. *Northern Pacific R. R. Co.* (30 L. D. 475, 479); *Cataract Gold Mining Co. et al.* (43 L. D. 248, 254); *United States* v. *Bullington*, On Rehearing (51 L. D. 604, 607). Considering all the evidence, the department believes that the land is not valuable for its limestone deposits, and therefore not disposable under the mining law. Furthermore, it is undisputed that the deposit is in lode formation. A lode discovery will not sustain a placer location. *Cole* v. *Ralph* (252 U. S. 286, 295); *Duffield* v. *San Francisco Chemical Company* (205 Fed. 480, 485); unreported departmental decision of September 14, 1927, in the case of *United States* v. *Borax Company*. The locations must, therefore, be declared void.

In view of the conclusion reached, it is unnecessary to consider the conflicting evidence as to the value of the labor and improvements made upon the claims. The Commissioner's decision canceling the entry is affirmed, and the claims are adjudged of no validity.

*Affirmed.*

---

## DISTRIBUTION OF ROYALTIES ON OIL AND GAS PRODUCED FROM A HOMESTEAD ALLOTMENT OF A DECEASED CREEK INDIAN

*Opinion, July 20, 1931*

CREEK INDIAN LANDS—HOMESTEAD ALLOTMENT—HEIRS—DEEDS—DOCTRINE OF RELATION.

Approval by the Secretary of the Interior of a deed by an heir conveying his interest in the homestead of a deceased Indian allottee is retroactive and the deed becomes effective as of the date of its execution and delivery.

CREEK INDIAN LANDS—HOMESTEAD ALLOTMENT—HEIRS—MINORS—DESCENT AND DISTRIBUTION.

Where a Creek Indian died possessed of a homestead allotment, leaving heirs in general and also issue born since March 4, 1906, the interests of the heirs in general are present vested interests in the fee in remainder, the beneficial use or enjoyment of which is postponed until the termination of the special estate created by the proviso to section 9 of the act of May 27, 1908.